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Exhibit 36 Minutes of a board of directors
meeting dated September 15th,
2014 134

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MONTREAL, CANADA

December 2, 2021

(PROCEEDINGS COMMENCED AT 12:30 P.M.)

THE VIDEOGRAPHER: Good afternoon. We're now on the record.

This begins videotape number 1 in the 30(b)(6) deposition of Michael Kron in the matter of AnywhereCommerce, Inc. and BBPOS Limited versus Ingenico Inc., et al., in the United States District Court For the District of Massachusetts, civil docket number 1:19-cv-11457-IT. Today's date is December 2, 2021, and the time on the video monitor is 2:34 P.M.

This deposition is being taken remotely via Zoom in Montreal, Quebec, Canada, at the request of counsel for Ingenico Inc. et al, Adler Polluck & Sheehan, P.C. Videographer is David Oxilia of Magna Legal Services and the court reporter is Susan Steudel, also with Magna.

Will counsel and all parties present state their appearances and whom they represent.

MR. TECHENTIN: Jeffrey Techentin on behalf of the defendants.

MS. BOZEMAN: Melissa Bozeman of Kutak Rock on behalf of the plaintiffs.

THE VIDEOGRAPHER: Thank you. The court reporter

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1 confirm that?

2 Q. I'm asking you, unfortunately. So we'll get your
3 best recollection.

4 A. I'll say yes. It includes POGO.

5 Q. Is POGO a private, white labelled product?

6 A. Yes.

7 Q. Is it a white labelled version of Rambler?

8 A. I believe so. My best recollection.

9 Q. I'll ask this question and you're not going to
10 know the answer so my follow-up question is going to be
11 how we figure it out; okay? So just so you know. I'm not
12 trying to trick you. From May of 2010 forward, how much
13 revenue did AnywhereCommerce generate by selling products
14 that were either mag stripe with audio jack capability or
15 EMV capable and Bluetooth enabled?

16 A. You want an answer to the nearest million,
17 or ...?

18 Q. I told you you weren't going to know the answer.
19 Do you happen to know that? It would be a pretty
20 remarkable thing if you did.

21 A. No. I don't have that exact number, no.

22 Q. So my follow-up question is how would we figure
23 out? If we wanted to go through AnywhereCommerce's books
24 and records to try and figure out how many of these units
25 were sold and how much they sold for, how would we go

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1 A. My involvement was advising my counsel who have
2 -- who might have had relevant information that they
3 should be including in the discovery process. So the
4 names of employees. The names and introductions to
5 employees and that sort of thing.

6 Q. And I don't want to get involved in your
7 conversations with your lawyers about this, but did you
8 personally go out and solicit materials from anybody
9 including your controller, for example?

10 A. No. I did not personally solicit information. I
11 made introductions to the parties that did the soliciting.

12 Q. Did you take any -- did you -- let me start over.
13 Did you undertake any review of the materials that your
14 attorneys had gathered?

15 A. No.

16 Q. Have you done any review of the documents that
17 were actually produced in this case?

18 A. Did I review any documents that were produced in
19 this case?

20 Q. By AnywhereCommerce, I should say.

21 A. No, I don't recall reviewing documents that were
22 produced. Nothing comes to mind.

23 Q. So you're not familiar with the particulars of
24 the financial disclosures that have been made to us in
25 this case?

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1 about doing that?

2 A. We would just ask my controller to go through the
3 accounting records and then she could produce that report.

4 Q. Well, unfortunately she's not here and she
5 doesn't -- she's not on Ingenico's payroll. So do you
6 know if materials have been produced in this litigation to
7 the defendants that would allow them to figure that out?

8 A. I do not know.

9 Q. Have you been involved with the gathering of
10 documents for production in this case?

11 A. What do you mean by "involved"? I handed over my
12 computer and I handed over access to my computer and
13 everything was downloaded. Helped negotiate a contract.
14 I'm not involved beyond that. I did not look at any of
15 the documents that came out of the AnywhereCommerce
16 discovery process.

17 Q. What are you talking about, negotiating a
18 contract?

19 A. Well, I guess there's a company that had to take
20 all this information and maintain it and so we paid them
21 some fees.

22 Q. Understood. Okay.

23 A. That's my involvement.

24 Q. Have you had any role in terms of quarterbacking
25 the document gathering process for the company as a whole?

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1 A. I seem to recall a list. I seem to recall a list
2 of required documents, and I put parties together, and I
3 assume that all documents that were requested that I saw
4 on a list were provided but I didn't actually review each
5 response. But I did -- I do recall your requesting
6 financial information, et cetera, et cetera, so I presume
7 it was delivered. But I didn't actually verify everything
8 that was delivered.

9 Q. Did AnywhereCommerce ever seek any legal advice
10 with respect to the implications of the BBPOS-ROAM license
11 agreement on its ability to continue to sell products like
12 the Rambler?

13 MS. BOZEMAN: I'll just caution the client to
14 answer yes or no, but not to disclose the contents to the
15 extent that there was legal advice sought and provided.

16 A. No.

17 BY MR. TECHENTIN:

18 Q. Does AnywhereCommerce have any contract or other
19 agreement with BBPOS with respect to its own potential
20 liability for the sale of products that are subject to the
21 exclusive licenses in the BBPOS-ROAM Data agreement?

22 MS. BOZEMAN: Objection. And can I have that
23 read back. I'm sorry.

24 A. Yeah. Same here.

25 (REPORTER READS BACK)

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1 being offered by Ingenico at a trade show that looked very
2 much like our products and they could not have put these
3 -- these products came out of nowhere and he didn't
4 believe these products could have just been developed in
5 this short period of time as when he -- I guess he saw
6 their last set of products. I don't know on what basis he
7 said that it was a short period of time. I don't know
8 what reference point he was using, but that's just what he
9 said. I don't know.

10 Q. And I realize this was a long time ago, but I'll
11 ask this anyway. But you keep saying products, plural.
12 Was he referring to plural products or a single product?
13 Do you remember one way or the other?

14 A. Good question. No, I don't remember if it was
15 plural products. Because it could be like the Walker, you
16 know, that has multiple products called Walker, just
17 different features. So he didn't specify whether they
18 had, you know, four versions of the same factor that did
19 different things. So there was no specification.

20 Q. Did he say which BBPOS products -- product or
21 products, these Ingenico products resembled?

22 A. Yes. The Chipper. The Chipper at a high level.
23 He didn't specify which Chipper. So I took it as any
24 Chipper and variation of Chipper.

25 Q. I apologize for making you say this again, but

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1 communicated to me that there was a lawsuit between Will
2 Graylin and Ingenico in which Will Graylin mentions that
3 he believed that Ingenico is taking trade secrets from
4 BBPOS. That was part of a lawsuit. So I think that was
5 the next time, and I don't remember when that was when the
6 lawsuit took place, when -- that would have been the next
7 reference to trade secret theft, was a reference to a
8 lawsuit.

9 Q. And did he provide you with any greater detail in
10 terms of what the nature of the theft was or the trade
11 secrets that were being violated?

12 A. No. It didn't change. It was the same, you
13 know, schematics. I understood schematics. But it wasn't
14 limited to schematics. It was just a high level
15 discussion.

16 Q. Did you review any of the documents from the
17 Graylin litigation?

18 A. I seem to recall perusing the Graylin litigation
19 at some point out of curiosity.

20 Q. What was the next time that Mr. Lo made any
21 representations about the trade secrets?

22 A. Right around the time he decided to engage
23 counsel to file a lawsuit.

24 Q. Right around the time Ben Lo hired lawyers to
25 file a lawsuit?

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1 remind me what Chipper is functionally?

2 A. Chipper's like Walker. So it's an EMV reader
3 that may or may not have mag stripe and it may or may not
4 have Bluetooth and it may not have tap, but it comes in
5 different versions. With tap. Without tap. But I'm not
6 sure which Chipper version he was referring to.

7 Q. Does it have an audio jack?

8 A. At one point it did and at one point it didn't.

9 I -- I'm not sure. At one point it did maybe and it
10 didn't. So this might have -- you know. Probably a
11 non-audio jack reader and a chip card reader. Sometimes
12 you can put an audio jack slider just on the side. Not
13 sure if Chipper had that. But I think it didn't. I would
14 think it would be chip only.

15 Q. Is that why it's called Chipper?

16 A. Yeah.

17 Q. Do you know?

18 A. Yeah, because of the chip card feature. Because
19 it can accept chip cards, yeah. And Swiper, because it's
20 only a swipe card.

21 But, again, I didn't name them, so ...

22 Q. So when was the next time Mr. Lo made any
23 representations to you about their being trade secret
24 information incorporated into the Ingenico technology?

25 A. At some point later. At some point he

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1 A. Yes. In that time period it would have come --

2 Q. When was that?

3 A. Would have been 2017, I'm presuming. I forget
4 the exact day of the lawsuit, but I'm sure it took six to
5 nine months to write it up, so I'm just going by memory.
6 I presume it was 2017.

7 Q. So tell me about that conversation, the one that
8 you just referenced.

9 MS. BOZEMAN: And I will caution you if this was
10 a conversation that was had between you and Ben but it
11 reflected any sort of legal analysis or legal advice that
12 you had received, then I would be instructing you not to
13 answer.

14 A. Yes, it did. It had to do with conversations
15 that he had with his counsel.

16 BY MR. TECHENTIN:

17 Q. So let's break that down just a little bit. Was
18 this a telephone call?

19 A. Yes.

20 Q. When did it occur?

21 A. In the 2017 time period. I can't give you an
22 exact day.

23 Q. Who participated in that phone call?

24 A. Just me and him.

25 Q. Where were you?

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1 A. I would have been in Montreal most likely.
 2 Q. Do you know where he was?
 3 A. No.
 4 Q. Do you know if he was in the United States?
 5 A. I do not. No, I do not. Because he travels
 6 around the world so it's like he doesn't always tell. I
 7 don't even ask him. That's why I say I don't know because
 8 it could have been anywhere.
 9 Q. Do you have reason -- oh, sorry.
 10 A. He's literally been to 50 countries at least
 11 selling products.
 12 Q. He lives in Hong Kong; correct?
 13 A. He lives in Hong Kong, but he travels probably --
 14 used to travel five, six months of the year back then.
 15 Q. Do you have any reason to believe that he was in
 16 the US?
 17 A. He could have been. I don't have any reason to
 18 believe that he was or wasn't. He has an office. He has
 19 an office in the US so he could have been in the US, but
 20 he's got offices in different parts of the world.
 21 Q. Who initiated this conversation?
 22 A. He did.
 23 Q. Did he tell you why he did?
 24 A. Why he did what?
 25 Q. Initiated the conversation.

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1 A. Yes.
 2 Q. Do you know if Mr. Lo had ever spoken with anyone
 3 from Kutak Rock before that conversation you had with him?
 4 A. I believe he'd already -- see he's engaged Kutak
 5 Rock for unrelated matters, as have I, but I can't tell
 6 you specifically the first time he engaged Kutak Rock on
 7 unrelated matters. I'm not sure if this is the first
 8 matter with which he discussed with Kutak Rock. He might
 9 have had other discussions prior to this discussion which
 10 is my answer. On other matters.
 11 Q. So excluding counsel's legal advice or mental
 12 impressions that might have been shared with you what were
 13 the general subject matter topics that you discussed with
 14 Mr. Lo in this conversation?
 15 A. There was nothing that wasn't part of discussions
 16 with counsels. Either my discussions with my counsel or
 17 his discussion with his counsel.
 18 Q. And let me be clear. I'm trying to make sure
 19 that I'm not asking you to tell me what advice your lawyer
 20 gave. I'm asking you what topics were discussed and
 21 perhaps the discussion included the exchange of that
 22 protected type of information, but what was the topic?
 23 A. The topic was his intention to litigate against
 24 Ingenico. That was the topic. There was no other topic.
 25 There was no business topic of a different sort in that

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1 A. To let me know that he was planning to litigate
 2 against Ingenico for trade secret theft. Just inform me.
 3 Just to be informative.
 4 Q. Let's back that up. Did he send you a text or an
 5 email that says hey, let's talk?
 6 A. No. He just calls me.
 7 Q. What were the topics of your conversations with
 8 him?
 9 MS. BOZEMAN: I would just caution you not to
 10 disclose any information that involves legal advice.
 11 A. All of it had to do with his conversation with
 12 his counsel.
 13 BY MR. TECHENTIN:
 14 Q. At the time that this conversation occurred in
 15 2017 were you already represented by Kutak Rock?
 16 A. Yes. On multiple matters, yes. In other
 17 matters, yes.
 18 Q. Had you engaged them with respect to potential
 19 litigation regarding Ingenico?
 20 A. You mean had I signed off on that litigation?
 21 Q. No. Were they providing you with advice with
 22 respect to potential litigation?
 23 A. Yes.
 24 Q. And you'd had communications with Kutak Rock on
 25 that subject before you had this conversation with Mr. Lo?

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1 conversation.
 2 Q. Was one of the topics also your intention to sue?
 3 A. Yes. That would have come up as well.
 4 Q. Had AnywhereCommerce already taken a decision to
 5 sue Ingenico or the defendants prior to this conversation
 6 with Mr. Lo?
 7 A. Yes.
 8 Q. When did that happen?
 9 A. It -- at some point in the preceding three-month
 10 period.
 11 Q. And other than the knowledge that you've
 12 described for me about what Mr. Lo told you as far as
 13 trade secrets and the RP350X and the RP450X is concerned,
 14 leaving that aside, what conduct by the defendants were
 15 you aware of three months before this conversation in 2017
 16 that justified suing Ingenico?
 17 A. Well, the conduct of tortious interference.
 18 Q. And we're not going to go over it all again, so
 19 I'm going to try and get you to agree with the sort of
 20 general statement. So the decision to sue Ingenico was
 21 based upon Ingenico's use of BBPOS's trade secret
 22 information in its products; right?
 23 A. Yes.
 24 MS. BOZEMAN: Objection. But you can answer.
 25 A. Principally. But that would be the principle;

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1 Q. At any time prior to that conversation?

2 A. No.

3 Q. Did Ben Lo say to you, "I've hired Kutak Rock to
4 be my lawyers, too"?

5 A. No. No, he did not.

6 Q. Did Ben Lo say anything that suggested he hadn't
7 hired lawyers yet?

8 A. Yes. He said that he had the intention of hiring
9 Kutak Rock; that they weren't hired yet.

10 Q. And during that phone call -- strike that.

11 Prior to that phone call did you have any agreement
12 with Mr. Lo with respect to the confidentiality of the
13 communications during that phone call?

14 A. No. Not that I know of. I don't know if a
15 general NDA between the two companies just is in
16 existence. I'm not sure if that would -- we didn't have a
17 specific NDA about that phone call, but I believe there's
18 an ongoing NDA as part of our agreement between the two
19 companies.

20 Q. In fact, you didn't have any discussions with Mr.
21 Lo about any parameters for this conversation before the
22 conversation happened; right?

23 A. Right. Nothing specific. No.

24 Q. All right. How long did that phone call take?

25 A. Couldn't have been long. Maybe 15 minutes.

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1 A. They didn't tell me they did.

2 Q. Other than anything we've talked about up to this
3 point, did AnywhereCommerce do any further investigation
4 into the facts that support its tortious interference
5 claim before it filed suit?

6 A. You mean AnywhereCommerce or its counsel?

7 Q. Or its counsel or private investigators. I don't
8 care who did it. Did you investigate any facts beyond
9 what's already been disclosed here today to support your
10 contentions about tortious interference before filing your
11 complaint?

12 MS. BOZEMAN: I'm going to caution him to not
13 disclose any substance of legal advice or investigations
14 that were done by counsel. But setting that aside you may
15 answer.

16 A. The investigations were with counsel. All
17 investigations included counsel. We did not hire any
18 third parties other Kutak Rock to help make this
19 assessment.

20 BY MR. TECHENTIN:

21 Q. What facts did you learn as a result of any
22 investigations that were performed on your behalf that
23 pertained to the validity of your tortious interference
24 claim?

25 MS. BOZEMAN: I'm going to instruct you not to

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1 Q. And how many more times did you discuss this
2 litigation with Mr. Lo before this contract was signed?

3 A. Can't recall having further conversations with
4 Mr. Lo privately. I would imagine the next conversation
5 would have included counsel because there were
6 conversations where Oliver Griffin was a party to the
7 conversation. And then there was emails on the paperwork
8 to counsel driving the email communications among the
9 three of us.

10 Q. Okay. At some point did Ben Lo hire Kutak Rock?

11 A. Did Ben Lo hire Kutak Rock?

12 Q. For this lawsuit?

13 MS. BOZEMAN: Individually or?

14 MR. TECHENTIN: I'm sorry. Fair point. Fair
15 point.

16 BY MR. TECHENTIN:

17 Q. Did BBPOS hire Kutak Rock?

18 A. Other than through a three-way agreement, I'm not
19 aware that he hired them separately.

20 Q. And that's sort of my question. Are you aware
21 one way or the other whether BBPOS had engaged Kutak Rock
22 prior to the signing of that letter, of that contract?

23 A. No, I guess not. I guess not. They could have.
24 I guess not. I don't think they did, but ...

25 Q. Okay.

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1 answer to the extent that the factual circumstances relate
2 to the legal or mental impressions of counsel and would
3 include any sort of information received by you for the
4 purposes of obtaining legal advice. So if there's
5 anything separate, you may answer.

6 A. There's nothing separate.

7 MR. TECHENTIN: And, counsel, if you want to have
8 a discussion that's off the record, we can. I take
9 exception to your instruction. Facts aren't privileged
10 and my question was not designed to elicit legal advice or
11 impressions of counsel. But I'm trying to probe the Rule
12 11 basis for filing this claim, and so I would like to
13 know what facts were available to him that would support
14 the allegation of a tortious interference claim here. If
15 you want to block me from getting those, fine. But I
16 think it's improper because I'm asking about facts. If
17 the facts were communicated to him, I'm entitled to know
18 about them.

19 MS. BOZEMAN: Well, I do disagree with you.
20 Because sometimes facts when they are compiled into a
21 certain order, they can take on significance that reflects
22 the mental impressions of counsel. So to the extent that
23 you're asking for a selection of a universe of information
24 that was at play during the investigation of, you know,
25 relevant facts related to this lawsuit, those, the